


Center for Professional Ethics, Volume 2, Issue 1, 1999

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CENTER FOR PROFESSIONAL ETHICS

AT CASE WESTERN RESERVE UNIVERSITY

FALL 1999

VOLUME 2, Number 1

A Look at Vichy Law

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"[Ethics]...is not even comparable with a particular language that we might decide to stop speaking. It is more like the condition of speaking -- and thinking -- in any language at all."

-- Mary Midgley

In April 1999, the Center for Professional Ethics, along with four other sponsors (the Baker-Nord Center for the Humanities, the College of Arts & Sciences, the Samuel Rosenthal Center for Judaic Studies, and the School of Law), featured a lecture by Dr. Richard Weisberg entitled "Vichy Law and the Holocaust in France." Part I of our report on this speech is published here. Part II will be published in the Volume 2, Number 2 newsletter, which will be out early in 2000.

Dr. Richard Weisberg, Walter Floersheimer Chair in Constitutional Law at the Benjamin N. Cardozo Law School of Yeshiva University, began the fourth Robert W. Clarke Memorial Lecture by telling the audience that he was going to talk the audience about a period of French history that

was one of France's darkest periods, and one with which the French people have had trouble coming to grips.

"It's fitting that the paper I am going to give comes under the rubric of the Center for Professional Ethics, because the main point I want to make about Vichy, France is that it is of optimal importance for Americans to understand what happened during that period.

"The example of Vichy -- of what a legal system did during World War II in Europe, with all of the darkness and horror we associate with Hitler's terror -- is important for Americans [to know], because much of what happened in their legal system was taking place under the rubric of principles and beliefs that we hold very dear in our system."

Like ours, the French system is one of constitutional idealism.

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Furthermore, Professor Weisberg explained, "Our mutual beliefs...in equality and due process date from the late 18th century, use the same sources, and had in mind the same reforms of fundamental problems that had plagued the geographical areas before our two revolutions."

Yet under French law, and with very little pressure from the Germans, he noted, the Jewish population was persecuted. He then asked these important questions: "How could it have happened...within a system that still was paying lip service to the notion of equality? How could it have happened in a country like France, whose ideals are so similar to ours? More to the point, how could it have happened from an ethics standpoint, and could it happen here?"

"Seventy-five thousand Jews were sent from France to camps in the east during the period that we are talking about today. Most of them [were persecuted] under French law (interpreted) with enormous participation from all kinds of individuals in the legal system, not just fringe anti-Semites, quislings or right-wing extremists.

"This is something that every American who is legitimately interested in France, legitimately interested in Europe, or legitimately interested in WWII needs

to bear in mind." Professor Weisberg also noted that it is important for people "to internalize some of the data" instead of saying 'It happened over there, and these people were irredeemably evil, and there is very little in this for me,' or 'Isn't it too bad that things like this can happen elsewhere?' " He added, "I don't want to conflate what really was historically...a period of victimization and enormous suffering, [one] we hope in our lifetimes and our children's and grandchildren's lifetimes never to have to face again. "My talk might be better called 'Yesterday,

he focused on the period from 1940 to 1944.

"My story begins with the invasion of France by Hitler's troops in 1940. In the blitzkrieg, those troops overran Europe, conquered the northern half of France, and by June of 1940 had forced the French army into disarray and surrender. Hitler had occupied Paris. It was a very dark period in the hearts of anyone who is a Francophile like myself. We still have a pang when we see the infamous pictures of the [Germans] marching along the Champs-Élysées in the defeated,

"This was a republican form of government literally going out of business and voting full powers to an executive. It was a very strange maneuver that [to this day] is still being talked about and debated as to its legitimacy...."

Today and Tomorrow: Lessons for America from the Holocaust in France.' 'Yesterday' could take us back in French history for centuries -- from the Dreyfus case through the period of the Third Republic (the period just preceding the war)." However,

demoralized France." He continued, "Hitler in Paris...it's already a tragedy. So what did the French do in the face of their defeat?"

"There was a huge exodus from Paris. Ordinary citizens left the

capital city en masse and fled toward the south because it was unclear how far Hitler would have his troops go. Meanwhile, the Third Republic was still in business. It was still the legislative parliamentary and the executive arm of the defeated country. In that very same month, the Third Republic passed legislative powers -- **full** legislative powers -- along to an octogenarian hero of World War I, Philippe Petain.

"Petain was a charismatic man whom the French thought would bring their country together with his moral and spiritual force." But the French did something very strange. They gave Petain full powers. "This was a republican form of government literally going out of business and voting full powers to an executive. It was a very strange maneuver that [to this day] is still being talked about and debated as to its legitimacy," Professor Weisberg said.

Because of Petain's popularity, there was very little contemporary debate about the legitimacy of passing the legislative powers to him. "An armistice agreement was signed, and France kept its own autonomous government in slightly more than a third of the southern part of the country," explained Dr. Weisberg. As an aside, he noted that "we use the word Vichy...because Marshal

Petain set up his government in a spa town known as Vichy." And in Vichy, Petain brought into his government many figures who were already known to the French.

"So our past involves an assimilation of the fact that although they were defeated by Hitler, the French were permitted to continue their own government, their own *form* of government, although different in the way that I have described," Professor Weisberg said. "The Germans had too much else on their mind in 1940 to pay much attention to what Vichy did, even regarding our central subject for today, which is the legislative program of Vichy in regard to the Jewish people.

"Among the first acts of the Vichy government are twin statutes of October 3 and 4, 1940, relating to the Jewish population in France. These statutes, legislated by Petain and his cabinet with no German influence at all, first and foremost defined who a Jew was."

This kind of legislation in definition had been unknown in France for 150 years. Professor Weisberg explained that it would be like our Congress deciding to legislate who a Zen Buddhist is, and then defining a Zen Buddhist in a certain way, and then imposing sanctions on Zen Buddhists.

He continued, "The laws of October 3 and 4 were extensive in that

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penalties would descend on any individual defined as a Jew. Vichy's definition of 'Jew' was already wider and encompassed more people than the definition the Germans had set out for the occupied part of the country. By the German definition, if you had three or more Jewish grandparents, you were Jewish. For Vichy, if you had three or more Jewish grandparents, you were Jewish; but if you had two Jewish and two non-Jewish grandparents

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and you were married to another person who had that category of grandparental heritage, you were also considered a Jew.” He added, “Since there were a lot of mixed marriages and mixed heritage individuals in France, hundreds of people who would not have been covered by the *Nazi* ordinance for the occupied part of France were covered by the Vichy statute.

“These early October statutes permitted the police, in any given district, to round up any person falling under this definition who did not have French citizenship, and to herd those individuals into special camps. These camps were in the southern part of the country, some of them inherited from the Spanish Civil War period when France had set them up to hold refugees that had come from Spain. Now they became the

temporary home of the beleaguered population of ‘stateless Jews’ who found themselves in France, traditionally a safe haven for people escaping persecution. In the twinkling of an eye, by virtue of this statute, thousands of individuals were herded into these camps. Three thousand were to die there, on French soil.”

The first Justice Minister that Petain brought down to Vichy was Raphaël Alibert. Alibert, a virulent anti-Semite, was an extremist and a fringe figure who had been waiting to come into the government. He was the one who authored the statute -- it was Alibert’s first task to target the Jewish population. “The reason Petain took him into the government,” explained Professor Weisberg, “was that Alibert was a superb, technical lawyer. He was also fiercely anti-German, which

was typical of the anti-Semites who were in the Petain government. In fact, they tended to be as fiercely anti-German as they were anti-Semitic.” However, Alibert was very quickly fired, and this opening gave way to another, but very different and more representative, Justice Minister.

“Before I describe the new Justice Minister, please put yourself in the place of a population receiving a statute so different from what anyone had been used to [for at least 150 years],” urged Professor Weisberg. “How do you respond to this kind of law? Anyone trying to think about this historical issue, ethically, has to ponder this. Because, more generally, you will experience [something like] this during your lifetimes, if you haven’t already.

“Having spent 15 years in the archives, I can tell you that many people in the government agonized about this law. It wasn’t just a question of how the government responded to the law; in order to make a law like this work...people are required. People need to enforce the law, to implement it, to work with it on the level that makes sense to them. Now, you could say, if they jettisoned a law like this, the least that would happen is that the Nazis would come in and do the

“How do you respond to this kind of law? Anyone trying to think about this historical issue, ethically, has to ponder this. Because, more generally, you will experience [something like] this during your lifetimes, if you haven’t already.”

job themselves. What we know now is that first, the French were autonomous from the Germans in promulgating these laws, and second -- and more important -- they *considered* themselves to be autonomous. We know that the Germans did not have the manpower at the beginning to enforce an anti-Semitic program against a population as complex and sometimes as rebellious as the French population can be. This means [we are talking about] not only the history of an anti-Semitic legislator writing a statute, but also the history of thousands of people working with the statute, people who had many choices.”

To further illustrate the sad truth of France’s compliance, Professor Weisberg noted that German intervention wasn’t a factor in the southern part of France (the Free Zone) at that time. No German authority existed there until late in 1942. “The government consisted of enough people who came from the Third Republic and who, prior to the war, were not like Raphaël Alibert; they were not extremists, they were not anti-Semites. People in the government, whose memoranda I saw as they exchanged comments with each other about these new laws, had deep doubts...about such a strange law, so foreign to egalitarian notions.

“People outside the government also had a great sense of dismay, even if they had a superficial or deeper anti-Semitism that they may have expressed during their lives. The lawyers responding to those outside the government were also surprised and, to a large extent, unsettled. Those who weren’t being herded into camps (the rest of the population) saw those being persecuted losing their careers or in other ways being victimized by these laws. That included both the citizens of France and the stateless individuals who were at risk of greater punishment. The entire Jewish population, even in the so-called Free Zone, was at risk once these laws were passed.”

The next important question was whether France’s legal system would work with these laws. Using history, we can see how two other European countries reacted to similar events. According to Professor Weisberg, “when Belgian lawyers were faced with a German ordinance saying that no Jew could serve as a lawyer or a judge, or could [continue to] participate in the Belgian legal system (the country did not have its own government at the time), the head of the equivalent of the Supreme Court (the Brussels Bar Association) and another prominent lawyer wrote a four-page

protest letter to the German high commander in Brussels.

“They cited the Haig convention of 1907 for the proposition that ‘while the Germans, as an occupying force, had the right to keep the peace in the street, they had no right to interfere with the private workings of the Belgian legal system, and since whoever serves as a lawyer or a judge is completely a matter of private concern, the Germans, under the convention, had absolutely no right to be determining who could serve.’ They insisted that their Jewish brethren on the bench and at the bar should stay, with no interference from the Germans.”

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“Most of the lawyers...involved in effectuating the laws of Alibert would have been horrified only a few months before to see themselves acting that way.”

Professor Weisberg continued, "Even in face of such tragedy...there was never such a protest from France, which had its own autonomous government.

"Italy allied with Hitler, and had racial laws at least as severe as Raphaël Alibert's racial laws of October 1940. However, the Italian Bar more or less ignored the laws, saying, 'Well, we have these laws, but we don't have to implement them.' It wasn't until the Germans rolled into Italy in 1943 that most of the violence against the Italian Jewish population began.

"With a considerable amount of theoretical anguish, the French, nonetheless, set about interpreting the laws and enforcing them in a manner that I describe as 'desiccated Cartesianism.' What was great and noble about the French, [for example] their origins in René Descartes, in this context, was permitted to proceed without any sense of the actual circumstances in which they were behaving. It was as though you could move ahead over a four-year period, oblivious to what one day before would have shocked and sur-

prised you. Most of the lawyers...involved in effectuating the laws of Alibert would have been horrified only a few months before to see themselves acting that way. But something about their notion of professionalism, something about their notion of logic, permitted them to carry through over a four-year period. Over 200 laws, decrees and ordinances were passed by Petain's regime during this time." ❖

(To be continued in the Winter 2000 newsletter.)

The Center Launches Website

The Center for Professional Ethics has finally joined the rest of CWRU in cyberspace. Our website will be up and running right early in 2000.

The site will contain a great deal of ethics information, including ethics links, our two most recent newsletters, and news on the CPE and its projects and programs. We will even have a virtual membership form that will allow you to join the Center's illustrious ranks.

<http://www.cwru.edu/CWRU/Admin/CPE/cpe.html>

Tinkering with the Machinery of Death

The United States Supreme Court placed four "death penalty" cases on its current docket. Does this portend a radical change of direction in the constitutional jurisprudence surrounding the death penalty?

Pundits answer unequivocally. Their answer is "no." Thus, the Supreme Court will continue to tinker with the "machinery of death," as Justice Harry Blackman so hauntingly called these forays *after* his retirement from the Court.

One of the cases asks whether it is "cruel and unusual punishment" to subject capital offenders to suffer the risk of "physical violence, disfigurement and torment" from the mechanical

quirks of Florida's unreliable electric chair. Two others question the interpretation of the key provisions of the 1996 federal law which arguably strips federal courts of the power to consider issues not developed in prior state court proceedings.

So it goes. And so it will continue to go because of the strange and contradictory moral attitudes that plague us all when we think about "death" as a punishment for heinous crime. On the one hand, as a philosophical and even theological matter, many great minds and souls have justified capital punishment. Immanuel Kant thought it was a categorical imperative. The Roman Catholic Church has consistently argued its moral justification. On the other

hand, early in this century, after studying the ethics of civilization after civilization, Albert Schweitzer determined that the great common denominator of all of them was "reverence for life."

The question, then, is not whether the death penalty can be morally justified, but rather, whether it can be implemented in a way that does not – simultaneously – dehumanize those of us who execute others and those of us who desire those executions.

Because of the quandary discussed above, for most of my adult life I have been ambiguously supportive of capital punishment for certain narrowly defined crimes. My position began to change some years ago when

Arthur Chalkenson, a noted white South African lawyer, visited the law school at CWRU. Chalkenson was the founder of the first Legal Aid Society for blacks in South Africa when the country was still suffering under apartheid. In one of

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the talks he gave during his visit, Chalkenson worried out loud about the effect the practice of breaking the knuckles of young hoodlums might have on law enforcement personnel.

Somehow, I found that remark became a catalyst for me. Is it the case that brutal behavior – even in a just cause – could wind up making the just man as brutal as, or more brutal than, the unjust man? All

I knew about virtue – habitual good behavior – screamed out not only that it could but that it assuredly would.

Then Pope John Paul II's encyclical *The Gospel of Life* was brought to my attention. Here the spokesman for the Roman Catholic moral tradition asked the

same question that Chalkenson had asked. Acknowledging the possible moral justification for capital punishment, the Pontiff asked probing questions about life

“Is it the case that brutal behavior – even in a just cause – could wind up making the just man as brutal as, or more brutal than, the unjust man?”

itself as a value. Was there a consistent, reverential valuation or a quirky one, based on feelings of anger, revenge and expediency -- a cost-benefit calculation? It is not just the mistakes that are inevitably made. It is their effect on us.

The law and politics and sociology of capital punishment is a

nightmare of complexity. This editorial does not attempt to deal with all of that. However, in the first 10 months of 1999, there have been 82 executions, a pace

unequaled since the 1950s. After the 1972 *Ferman* decision halted executions in this country, there has been a steady rise. There are

500 more people on death row today than there were in 1994, 3,005 people in all. The United Nations has asked for a world-wide moratorium on executions. That moratorium should be endorsed for a variety of reasons. One very good reason is this: Continued tinkering with the machinery of death brutalizes all of us who are the mechanics. ❖

Coming soon to the CPE newsletter:

Part Two of Richard Weisberg's *A Look at Vichy Law*

Ted Gup on Ethics in Journalism

Report on this year's Frank J. Battisti Lecture, "*The Art of Judging: How Do Judges Judge?*"

Ethics Events

Katherine Wisner, M.D., Ethics Fellow, associate professor of psychiatry and reproductive biology, and director of women's services in the mood disorders program at University Hospitals of Cleveland, was recently interviewed on WEWS, Channel 5, the local ABC affiliate. In the most recent of her several appearances on local television and radio shows, Dr. Wisner was asked to comment on research involving postpartum depression. "We're trying to define a profile of which women become depressed. We're looking at psychosocial, marriage and socioeconomic status. We're also looking at hormonal status," she noted.

Dr. Wisner was listed as one of *Cleveland Magazine's* "50 most interesting people of 1998."

James Zull, professor of biology and director of the University Center for Innovation in Teaching and Education

(UCITE), was the recipient of an honorable mention at the 1999 Awards of Achievement ceremony sponsored by *Northern Ohio Live* magazine. The magazine presented the awards on September 13 at the State Theater in Playhouse Square. Zull and his partner, Robert Brownlee, were recognized in the education category for their work in leading a collaborative project involving CWRU faculty and Kirk Middle School teachers.

Center for Professional Ethics Director **Bob Lawry** recently moderated two panel discussions at CWRU.

The first was entitled "Women in Religion." Participants were the Rev. Clover Reuter Beal, associate director of the United Protestant Campus Ministries; Rabbi Carie Carter, assistant director of the Cleveland Hillel Foundation; Alice Bach, associate professor in CWRU's Department of

Ethics Updates

Religion; the Rev. Danielle DiBona of the Unitarian-Universalist Church; and Ramez Islambouli of the Muslim Campus Ministry. The CWRU Women's Coalition and the Baker-Nord Center for the Humanities co-sponsored the event.

The second panel that Director Lawry moderated was "The Art of Judging: How Do Judges Judge?" This discussion was the Frank J. Battisti Memorial Lecture for 1999. The panelists were Judges Nathaniel Jones, Diane Karpinski and Paul Matia.

Tom Anderson, honorary Ethics Fellow, was asked to moderate a panel discussion entitled "To Call or Not to Call: Parental Notification of Underage Alcohol/Drug Violations." The program was part of the "Sex Drugs and Rock-n-Roll" series sponsored by CWRU, the Cleveland Institute of Music and the Cleveland Institute of Art.

SUBMISSIONS

Editors seek submissions for a new textbook, *Ethics for the Professions*, to be published by Harcourt Brace. Appropriate for undergraduate courses in professional ethics, the textbook will include articles on issues that cut across various professions (Part I) and on issues within specific professions (Part II).

The editors seek articles that address these and related topics not mentioned above. The submission deadline is January 28, 2000, though earlier submissions will receive priority in the review process. Submissions and inquiries should be sent to John Rowan (jrowan@calumet.purdue.edu) or Samuel Zinaich (zinaich@calumet.purdue.edu). You may also contact them by snail mail at: Department of Philosophy, Purdue University, 2200 169th Street, Hammond, IN 46323-2094.

Teaching Business Ethics is soliciting articles for a new section in the journal called "Innovative Teaching Techniques." The section will contain essay-style short articles that describe novel or non-traditional teaching approaches. These approaches may involve practical ideas that enhance teaching effectiveness, creative teaching techniques, exercises, activities and simulations; novel uses of film, art or literature that explicate business ethics concepts or concerns; or uses of non-business concepts to explain business ethics concerns or concepts.

This section of *Teaching Business Ethics* will not publish cases. Instructions for submissions can be found at <http://www.wkap.nl/kaphtml.htm/IFA1382-6891>.

CONFERENCES

The Medical Alumni Association of the University of California, Davis is sponsoring a conference entitled *Health-Care Systems: Ethical and Economic Considerations* on January 13 and 14 in Sacramento, CA. Speakers include Dr. Larry Churchill, Dr. Christian Köck, Dr. Eike-Henner Kluge, Dr. Michael Garland, Dr. Harald Köck, Dr. Perry Pugno and Dr. Faith Fitzgerald. In addition, there will be some short papers given, selected from submitted abstracts. Inquiries should be addressed to Dr. Erich H. Loewy, Chair of Bioethics, University of California, Davis, UCDMC — PSSB 2400, 4250 V Street, Sacramento, CA 95817. TEL: 916-734-2177.

The Center for Ethics and Business at Loyola Marymount University in Los Angeles will hold its annual *Business Ethics Fortnight Competitions* in April 2000. The centerpiece of this event is an intercollegiate student team competition on Friday, April 14. Teams of 3 to 5 students (undergraduate or graduate) make 30-minute presentations that cover the financial, legal and ethical dimensions of a case from any area of business ethics. The competition is judged by executives and faculty; \$2,000 in cash prizes is available. (Participation by videoconferencing or videotaped presentations is allowable.) For more information, see www.ethicsandbusiness.org or contact Thomas I. White, Director, Center for Ethics and Business, Loyola Marymount University, 7900 Loyola Boulevard, Los Angeles, CA 90045. TEL: 310-338-4523.

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